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09/963,742	09/27/2001	Rob R. Montgomery	35646-175183	9308
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VENABLE LLP P.O. BOX 34385 WASHINGTON, DC 20043-9998			EXAMINER AKINTOLA, OLABODE	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/963,742	Applicant(s) MONTGOMERY, ROB R.	
	Examiner Olabode Akintola	Art Unit 3691	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 7, 8, 14-18 and 20-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 7, 8, 14-18 and 20-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10/01/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 7-8, 14-18 and 20-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The limitations "close to time of auction closing" and "as close as possible to the time of auction closing" in claims 1 and 23 are relative phrases which render the claims indefinite. The "close to time of auction closing" and "as close as possible to the time of auction closing" are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. For example, 24 hours before an auction closes could be considered as close to auction closing in an auction that runs for an entire month, while the same 24 hours could be the entire time another auction would run.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 7, 8, 14, 18, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Michael Miller, "The Complete Idiot's guide to online auctions" (Que 1999) (hereinafter referred to as "Miller") in view of Wagoner et al (USPAP 20060074792) (hereinafter referred to as "Wagoner") and further in view of Foth et al (US 6839690) (hereinafter referred to as "Foth")/ Hall et al (US 7099840) (hereinafter referred to as "Hall").

Re claims 1, 7, 8, 14, 18, 22 and 23: Miller teaches method of automating an interaction between a bidder and an electronic, variable, dynamic pricing online auction hosting service comprising of the steps of:

- a. receiving a registration of a bidder at an online, computer implemented, Internet-based, web-enabled, bidder bidding application site (site) by creating logon credentials that are used to at least one of authenticate and/or authorize the bidder 's use of services of the bidder bidding automation services application site; and receiving at least one bid account including logon credentials of at least one online auction hosting services site of the bidder (pages 133, 164);
- b. receiving financial transaction instrument information of the bidder to fund the bidder bidding automation services (page 133, 137);

c. receiving at least one online auction and one of said at least one online auction hosting services sites associated with said at least one auction and storing said at least one auction in a bid portfolio of the bidder for acquiring data using at least one scan agent and/or at least one bid proxy (pages 33-36, 145);

d. providing monitoring by the at least one scan agent of temporal progression of the at least one plurality of auctions, and notifying the bidder and/or the at least one bid proxy of any changes affecting the bidder's programmed bid parameters of the at least one auction, wherein said monitoring by the at least one scan agent is performed at least close to time of the auction closing (pages 33-36, 193-194);

e. enabling activating of the at least one bid proxy to programmatically bid on said at least one auction of said at least one online auction hosting services site by emulating the bidder's navigation and command input to said at least one auction hosting services site, the at least one bid proxy placing at least one bid, driven by said programmed bid parameters, until said at least one auction is either won or lost by the time of auction close of said at least one auction, wherein said at least one scan agent determines whether or not a competitive bid has outbid a most recent bid of the bidder (pages 34-36, 192);

f. activating the at least one bid proxy to programmatically place at least one counter bid by the emulating of the navigation and the command input of the bidder for said at least one online auction hosting services site, if said competitive bid is placed and detected before the time of auction closing of said at least one auction, wherein said at least one counter bid comprises computing and executing a valid higher bid for a forward auction or a lower bid for a reverse auction, that is within said programmed bid parameters, if said competitive bid has been made

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and accepted by the auction site that is higher for the forward auction or lower for the reverse auction than the most recent bid detected by the at least one scan agent (pages 34-36, 192).

g. receiving a search query from the bidder for a desired product from the product auctions of a plurality of auction sites including at least one of keywords, model identification, brand identification, synonyms, and unique identification, using at least one of a search agent, a persistent search agent, and/or a meta-search agent, and providing returned auctions, including retrieving current status of the product auctions and presenting the current status to the bidder (pages 143-147);

Miller does not explicitly teach

an online bidder-centric bid automation services application site, which is separate from the auction hosting services site

wherein said monitoring by the at least one scan agent is performed at least close to time of the auction closing

wherein said bidding by the at least one bid proxy is performed as close as possible to the time of auction closing

Foth/Hall teaches an online automation services application site, which is separate from the trade hosting services site (Froth: abstract, col. 2, lines 4-24; Hall: abstract, Fig. 2 RN {230, 240}, col. 7, lines 5-40). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Miller to separate the registration site from the auction-hosting site. One

would have been motivated to do so in order to make the system more efficient by separating the registration site from the auction site.

Wagoner teaches wherein said monitoring by the at least one scan agent is performed at least close to time of the auction closing; wherein said bidding by the at least one bid proxy is performed as close as possible to the time of auction closing (sections 0040). It would have been obvious to one of ordinary skill in the art the time of the invention to modify Miller to include this limitation as taught by Wagoner. One would have been motivated to do so in order to avoid raising the price of the bid at the early stages of the auction.

Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of Wagoner further in view of Foth/Hall and further in view of Hunt (US 6496855) (hereinafter referred to as "Hunt").

Re claims 20-21: Miller does not explicitly teach registering on multiple auctions site using a registration proxy. Hunt teaches this limitation (see abstract). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Miller to include this limitation. One would have been motivated to do this in order to provide a single source of data entry for bidders.

Claims 16, 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of Wagoner further in view of Foth/ Hall and further in view of Rackson et al (US 6415270) (hereinafter referred to as "Rackson").

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Re claims 16, 17: Miller is as discussed above. Miller does not explicitly teach wherein the one or more persistent search agents periodically search a list of a plurality of auction sites for product auctions that correlate with preference information stored in the portfolio of the comprising:

1. creating entries by the bidder for each kind of product of which the bidder desires to be notified if an auction for a product containing this description becomes available for bidding on any and all auction sites;
 2. periodically searching, using the one or more persistent search agents, search services of the plurality of auction sites to see if a matching product can be found in listed auctions; and
 3. sending, to the bidder, a link to a found auction communicated using at least one of wired and/or wireless messaging technology, if any matches are found; and
- i. receiving at least one of definitions of programmed bidding parameters of the directed programmed bid to the bid proxy, and/or
- authorization of the bid proxy to algorithmically compute a lowest market price based on reviewing prevailing market prices for similar products as determined by information stored in a clam warehouse.

Rackson teaches these limitations at abstract, col. 23, line 56 through col. 24, line 57, col. 18, lines 49-65, col. 16, lines 3-25 and col. 14, lines 45-49. It would have been obvious to one of ordinary skill in the art the time of the invention to modify Miller to include this limitation as taught by Rackson. One would have been motivated to do so in order to generate optimal values for the bids.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Miller in view of Wagoner further in view of Foth/Hall in view of Boyd et al (US 6963854) (hereinafter referred to as "Boyd") and further in view of Schulman (US 5600632) (hereinafter referred to as "Schulman").

Re claim 15: Miller does not explicitly teach
accelerating the performance of the bid proxy by using network telemetry and/or statistical algorithms to improve the win probability of the bid, comprising:

1. testing, using a telemetry agent, the response time of an auction site to periodically ascertain temporal latency for various types of queries and/or commands;
2. optimizing balance between when to place an initial bid and when to win the auction at a best market price, using information on the response time obtained during response time testing, wherein response time information is stored in an updateable profile for each auction site and is used by the bid proxy, and wherein the telemetry information collected

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comprises at least one a content type, and/or a transaction type including at least one of a query for auction status and/or a bid command, and/or a time span from a query to a response.

Boyd teaches improving win probability at col. 2, line 57 through col. 3, line 15, col. 9, lines 1-53. It would have been obvious to one of ordinary skill in the art the time of the invention to modify Miller to include this limitation as taught by Boyd. One would have been motivated to do so in order to optimize the bidding strategy.

Schulman teaches determining latency for various queries at col. 8, lines 7-23. One would have been motivated to do so for performance improvement purposes.

Response to Arguments

Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Srinivasan (US 7047210) teaches a method and system for auctioning a product on a computer network (see Figs 3A-3M).

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olabode Akintola whose telephone number is 571-272-3629. The examiner can normally be reached on M-F 8:30AM -5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on 571-272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

OA



HANI M. KAZIMI
PRIMARY EXAMINER